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10/733,957	12/11/2003	David S. Breed	ATI-371	8145
22846	7590	04/07/2006	EXAMINER	
BRIAN ROFFE, ESQ 11 SUNRISE PLAZA, SUITE 303 VALLEY STREAM, NY 11580-6170			TO, TOAN C	
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3616

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GROUP 3600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/733,957
Filing Date: December 11, 2003
Appellant(s): BREED ET AL.

Mr. Roffe, Brian
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 30, 2006 appealing from the Office action mailed March 9, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,101,436	Fortune et al	8-2000
5,822,707	Breed et al	10-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 60, 62, 64-68 are rejected under 35 U.S.C. 102(b) as being anticipated by Fortune et al (U.S. 6,101,436).

As to claims 60, and 65-66, Fortune et al disclose an apparatus for sensing pressure applied to a seat by an occupant of the seat and for controlling deployment of an airbag, comprising: a bladder (20) having a chamber; the bladder adapted to be arranged in a seat portion of the seat (12); a control module (50), and a pressure sensor (26) for measuring a pressure in the chamber, the pressure sensor generating a signal on the measured pressure in the chamber and providing the signal to the control module (50), wherein the control module is arranged to control deployment of the airbag (see column 2, lines 65-68); wherein the chamber has multiple sections (74) in flow communication with one another.

As to claims 62, 64, and 67-68, Fortune et al disclose a method for controlling an occupant restraint device arranged to protect an occupant in a vehicle in a crash

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involving the vehicle, comprising the steps of: arranging a bladder (20) defining a chamber in a seat (12) portion of a seat in the vehicle; measuring a pressure (26) in the chamber; providing a signal based on the measured pressure in the chamber to the control module (50), and controlling deployment airbag by means of the control module (see column 2, lines 65-68); and a pressure control device (22, 52) which controls pressure in the chamber by means of the control module.

The issue presented on this appeal is whether the claimed invention is entitled to the benefit of the filing date (June 7, 1995) of a granted parent application, namely U.S. patent application Series No. 08/474,783, now U.S. patent No. 5,822,707, which predates the effective filing date (February 18, 1998) of Fortune et al. and thus would remove the availability of Fortune et al. as prior art.

(10) Response to Argument

a. Claims 60, 62, and 64-68 (Group 1)

The examiner respectfully disagrees with appellant's arguments that the instant application is entitled to the earlier filing date (June 7, 1995) of U.S. patent application series No. 08/474,783, (now U.S. Patent No. 5,822,707, the '707 patent) which predates the effective filing date of Fortune et al (U.S. 6,101,436), then the Fortune et al is not available as prior art and the rejection of claims 60, 62, and 64-68 should be removed. In reviewing the '707 patent, the examiner notes that the '707 patent does not fully support the claimed invention of the instant application in the manner provided by 35

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U.S.C 112 first paragraph as required by 35 U.S.C 120; therefore, appellants are not entitled of the earlier filing date of the '707 patent.

Appellant's comment in page 5 of the brief is corrected.

In response to appellant's arguments in page 6 of the brief, the examiner respectfully disagrees for the following reasons:

(1) The '707 patent discloses at least two completely different embodiments, the first embodiment is represented by figures 2 and 9 and the second embodiment is represented by figures 5 and 10A; wherein, the first embodiment is directed to deployment of the airbag 900 is controlled by the module 150 based upon receiving signal from the weight sensor 200 (column 11, lines 35-43); and the second embodiment is directed to a seat having an air mattress containers 515, 518, and a pressured transducer 560 for monitoring the pressure within the containers 515 and 518 and for inputting the pressure information to the control module 150 which in turn determine an appropriate stiffness for the seat and adjust the stiffness of the seat such that improving seating comfort (column 9, line 45 to column 10, line 33).

(2) Although, the '707 patent designated the control module for both embodiments with the same reference numeral "150", but it appears that the control module 150 in the first embodiment is different from the control module 150 in the second embodiment. As mentioned above, the control module 150 of the first embodiment is used to control deployment of the airbag while the control module 150 of the second embodiment is used to adjust the stiffness of the seat. The '707 patent is also silent about "a common control module" or "single control circuit or module" as

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pointed out by appellant, the '707 patent also does not disclose any feature connecting from "measuring a pressure in the chamber" to "a deployment of an airbag"/"deployment of an occupant restraint device" such that the control module 150 could be considered as "a common control module" or "a single control circuit or module" which can use to control deployment of the airbag and also adjust the stiffness of the seat.

(3) The '707 patent discloses one morphological characteristic is weight which may be determined "by variety of technologies which measure either pressure onthe vehicle seat", this statement does not reasonably provide equivalent meaning with "measuring a pressure in said chamber".

(4) With respect to appellant's arguments in the last 5 lines of page 6, it is noted that appellant's assumption in parentheses is incorrect, since no where in the '707 patent disclose "the measured pressure in the container ...can be used as input to the control module 150 to control a vehicular component....such as an occupant restraint device)".

In response to appellant's arguments in page 7 of the brief, the examiner respectfully disagrees for the following reasons:

(1) With respect to the first paragraph of page 7 in the brief, it is noted that a person skill in the art at the time the invention was made (the '707 patent) would not know to incorporate the pressure sensor associated with the container (embodiment represented by figure 5) for controlling the airbag (embodiment represented by figure 9); otherwise, the patentability of the '707 patent is concerned.

(2) With respect to the second paragraph of page 7, appellant has incorrectly pointed out the recitation at col. 12, lines 56-64, the corrected recitation should be "there are possible combinations using different sensors which measure either the same or different morphological characteristics, such as knee position, of an occupant to accomplish the same or similar goals as those described herein", therefore, appellant's conclusion that "the combination is the use of the pressure sensor....for controlling airbag deployment" is immaterial with respect to the corrected recitation indicated above.

(3) With respect to the third paragraph in page 7, it is noted that figure 10A is directed to the second embodiment of adjusting the stiffness of the seat, figure 10A and the disclosure thereof does not provide any evidence in connection with the deployment of the airbag. Figure 9 is directed to the deployment of an airbag of the first embodiment but does not show any structure for measuring the pressure in the container or bladder.

In other words, the '707 patent does not disclose "a common control module" or "single control circuit or module" but rather discloses at least two different control modules having the same reference numeral "150". Therefore, the '707 patent is considered to not reasonably provide enablement for measuring pressure in the chamber and also controlling deployment of the airbag/occupant restraint device.

b. Claims 67 and 68 (Group 2)

The examiner agrees with appellant's arguments; however claims 67 and 68 directly and indirectly depend on independent claim 62 which is considered to not

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entitle of earlier filing date of the '707 patent (see above explanation). Therefore, claims 67 and 68 is also considered to not entitle of earlier filing date of the '707 patent.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


TTo

March 26, 2006

Conferees:

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